IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 786 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATHABHAI VIHABHAI RABARI

Versus

KODRIBEN MALABHAI RABARI

Appearance:

1. Civil Revision Application No. 786 of 2000

MR JITENDRA M PATEL for Petitioner No. 1-4/1

MR DM THAKKAR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2-5

RULE NOT RECD BACK for Respondent No. 1

RULE SERVED for Respondent No. 2-5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/11/2002

ORAL JUDGEMENT

1. The petitioners herein are the original appellants of the appeal being Civil Appeal No. 47 of 1998, which is pending before the Assistant District Judge, Himatnagar. In the aforesaid appeal, the present petitioners gave an application, being application exh.23, requesting the court to refer the issue whether the transaction of sale in question is contrary to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. By preferring the said application exh. 23 it was prayed that the issue to that effect may be referred to the competent authority under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 as contemplated in Section 36-B of the Act. The Appellate Court rejected the said application by giving detailed reasons. The Appellate Court came to a conclusion that no such issue was framed by the trial Court whether the transaction of sale in question is contrary to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The Appellate court also came to the conclusion that the appellants, who are the original plaintiffs of Regular Civil Suit No. 132 of 1987, have stated in the plaint that they have not entered into any transaction with the defendants. But the plaintiffs want to say that the transaction of sale in question is void. Considering the aforesaid aspects, the learned Appellate Judge rejected the said application exh. 23. The said decision is impugned in the present application.

2. At the time of hearing of the application, Mr. J.M. Patel, learned advocate appearing for the petitioners, submitted that the transaction of sale is contrary to the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and therefore the Appellate Court should have referred the issue to the competent authority as provided under Section 36-B of the said Act.

3. Considering the reasonings of the Appellate Court in my view, it cannot be said that the the Appellate Court has committed any error of law or any jurisdictional error. The Appellate Court has given cogent reasons for the purpose of deciding the application exh. 23 which is submitted in Regular Civil Appeal No. 47 of 1998. It is not in dispute that there is no pleading to the effect that the so called transaction of sale is void in view of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. When no such issue was framed by

the trial court naturally there is no question of making reference to that effect to the competent authority. In my view, there is no infirmity in the order passed by the Appellate Court.

4. At this stage, Mr. Patel for the petitioners requested this Court for allowing him to withdraw this Civil Revision Application on the ground that the petitioners would like to prefer an application for amendment of the plaint by making necessary application to the Appellate Court in this behalf. It is submitted by Mr. Patel that amendment can be granted even at the appellate stage. It is also submitted by Mr. Patel that by such amendment, the plaintiffs would like to challenge the sale transaction in question by amending the prayer clause of the plaint and in case such amendment is granted and if necessary issue is framed by the Appellate Court, the plaintiffs may request the Appellate Court to refer such issue to the competent authority. Permission to withdraw this Revision Application is accordingly granted. It is, however, clarified that this court has not expressed any opinion whether such amendment can be granted or whether such amendment application is maintainable. It is for the Appellate Court to decide such question as and when any such application is preferred. It is further clarified that this Court has not expressed any opinion on this point and this Court has merely recorded the statement of Mr. Patel learned advocate appearing for the petitioners. It is needless to say that if any such application is preferred the Appellate Court shall decide the same in accordance with law and independently without being influenced by the earlier order passed below the application exh. 23. This Revision Application is accordingly dismissed as withdrawn. Rule is discharged, with no order as to costs. Interim relief granted earlier stands vacated forthwith.

(P.B. Majmudar, J.)

/JVSatwara/